

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GARY D. BOWERS

Claimant

VS.

STATE OF KANSAS

Respondent

Self-Insured

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Docket No. 210,744

ORDER

Respondent appeals from a preliminary hearing Order of December 12, 1996, wherein Administrative Law Judge Alvin E. Witwer granted claimant a referral to Dr. Allen Pestronk of Washington University at St. Louis, Missouri, per the recommendation of Dr. Author R. Dick, the authorized treating physician.

ISSUES

- (1) Whether the Administrative Law Judge exceeded his jurisdiction by ordering the respondent to pay for the evaluation of Dr. Pestronk to confirm whether claimant suffers from amyotrophic lateral sclerosis (ALS), also known as Lou Gehrig's disease, in addition to his C-5 radiculopathy.
- (2) Whether the evidence presented provides the basis for determining whether claimant's ALS resulted from the accidental injury suffered by claimant out of and in the course of his employment with respondent.
- (3) Whether the Appeals Board has jurisdiction to decide this matter under either K.S.A. 44-534a or K.S.A. 44-551.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs of the parties, the Appeals Board finds, for preliminary hearing purposes, that it is without jurisdiction to decide the issues related to the referral of claimant to Dr. Pestronk in St. Louis, Missouri.

Respondent contends that claimant is suffering from ALS, also known as Lou Gehrig's disease. Respondent further contends that claimant's condition could not have arisen out of any injuries suffered by claimant while employed with the respondent.

A review of the evidence presented at the preliminary hearing, consisting in part of the medical records of Dr. Dick and Dr. Abrams, shows that Dr. Dick recommended the referral to Dr. Pestronk in order to narrow and to define the diagnosis of claimant's condition and hopefully reach a treatment regimen which would resolve claimant's ongoing problems. It is significant that in Dr. Dick's report of September 23, 1996, he points out that Dr. Abrams' September 13, 1996, letter emphatically denies that claimant has ALS. Respondent's defense is based totally on the allegation that claimant is suffering from some nonwork-related condition for which respondent should not be responsible. The medical reports defeat the respondent's contentions as they indicate specifically that ALS is not a current concern from a medical standpoint. What is evident from the medical records is that claimant is having ongoing symptomatology stemming from his May 5, 1995, work-related injury and the referral to Dr. Pestronk is for the purpose of providing additional diagnosis and treatment for that work-related injury.

K.S.A. 44-534a limits the jurisdiction of the Appeals Board to hear the appeals of preliminary hearings to the jurisdictional issues of whether claimant suffered an accidental injury, whether the accidental injury arose out of and in the course of claimant's employment, whether notice was given or claim timely made, or whether certain defenses apply. K.S.A. 44-551(b)(2)(A) provides in part:

"If an administrative law judge has entered a preliminary award under K.S.A. 44-534a and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing."

The Administrative Law Judge, in ordering a referral to Dr. Pestronk, was merely following the recommendations made by Dr. Dick, the treating physician. Respondent's concern regarding ALS appears, at least for now, to have been satisfied by the medical opinion of Dr. Abrams. As such, the Appeals Board finds that it is without jurisdiction to review the respondent's appeal in this matter.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Alvin E. Witwer dated December 12, 1996, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of February 1997.

BOARD MEMBER

c: Bruce A. Brumley, Topeka, KS
Scott M. Gates, Topeka, KS
Alvin E. Witwer, Administrative Law Judge
Philip S. Harness, Director